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SUPREME COURT, U.S.

No. 98-311

In The

# Supreme Court of the United States

October Term, 1997

ISLANDER EAST RENTAL PROGRAM AND J. RAY RILEY,

*Petitioners,*

v.

LOWRY BARFIELD, ELIZABETH PARR, JAMES B. PENNY, LOCKWOOD SEEGAR, ISLANDER EAST ASSOCIATION, AND BILL FERGUSON,

*Respondents.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit**

## RESPONDENTS' BRIEF IN OPPOSITION

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## QUESTION PRESENTED

The customary procedure by which an injunction violation is punished is by contempt proceedings. Under federal law, there is no right to a jury trial in civil contempt proceedings unless a statute so provides. Without statutory authority, Petitioners sought to present to the jury evidence of alleged injunction violations by Respondents. Did the district court abuse its discretion in exercising its equity jurisdiction and denying the requested jury presentation?

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## STATEMENT OF THE CASE

Respondents adopt the Fifth Circuit Court of Appeals' recitation of the factual and procedural background of this proceeding,[1] with the following additions:

Petitioners sought to present evidence to the jury purporting to show that Respondents violated the district court's August 2, 1995 injunction and that they suffered damages as a result. They also sought to present evidence of these alleged post-August 2, 1995 actions in support of their claims for trademark infringement, false designation of origin, tortious interference with contract, conversion, breach of fiduciary duty and conspiracy. The requested jury presentation was the subject of pre-trial briefing, Respondents' Motion in Limine and argument before the district court.[2] In the main, Respondents argued that Petitioners' legal claims pertaining to the post-August 2, 1995 time period simply recast their injunction violation claim.

Under the complicated factual circumstances presented, the district court ruled that all evidence of Respondents' activities occurring after August 2, 1995 pertained to equitable matters to be taken up by the court in contempt proceedings:

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[1] The Opinion of the Court of Appeals is reprinted at pages A-1 through A-13 of Petitioners' Appendix (hereinafter, "Appendix"). The Opinion's section entitled, "Factual & Procedural Background," is located at pages A-2 through A-4 of the Appendix.

[2] R. 70, 72, 73; R. 105 at 82-102, 125-27.

> THE COURT: Okay. That's, I guess, where I've got a problem. First of all, once the injunction was in place, then if [Respondents] continued to utilize the name and they had been told not to, they were violating the Court order, correct?
>
> MR. VIE: Correct.
>
> THE COURT: ***All right. Which is an equitable matter to be taken up by the Court, as far as contempt might be concerned and I guess any damages that might have flowed from all of that.***[3]

Similarly, the court held:

> THE COURT: All right. Well, I think and I guess in the last analysis that's what controls, ***that once that injunction was in place, any additional claims for damages after that date are going to be equity claims before the Court,*** and I don't think there's any way that I can sensibly let the jury hear it on some skirting issue, like you're suggesting, without causing all kinds of problems, ***because I really think it's all incorporated under the injunction and whether or not the injunction was followed by the parties.*** So, we'll just deal with it that way.[4]

The district court, thus finding that the issue presented by Petitioners for trial was a request for compensatory damages in civil contempt for violation of the injunction, then followed the federal rule that there is no right to a

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[3] R. 105 at 83-84 (emphasis added); *see also id.* at 89-94; Appendix at A-28-A-32.

[4] Appendix at A-28 (emphasis added).

trial by jury when the proceeding is for civil contempt unless a statute so provides. Having been presented with no statutory authority for Petitioners' requested jury presentation, the district court exercised its discretion to deny Petitioners a jury trial on the issue. The court accordingly instructed the jury that it would hear evidence only of activities occurring before the court's August 2, 1995 injunctive order.

The Fifth Circuit affirmed the district court. Specifically, in footnote 4 of its Opinion, the Court of Appeals held:

> Plaintiffs also contend that they were denied their Seventh Amendment right to a jury trial on this issue. This argument lacks merit. "There is no right to a trial by jury for the violation of an order of court when a proceeding is for civil contempt unless a statute so provides." 11A Wright, *supra*, § 2960 at 379 (citing *Shillitani v. United States*, 384 U.S. 364 (1966)). Plaintiffs have identified no statutory authority providing a right to a jury trial in the instant situation.[5]

Moreover, the Fifth Circuit denied Petitioners' request for rehearing on the same points raised in their Petition for Writ of Certiorari.[6]

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[5] Appendix at A-9-A-10 n.4.

[6] Appendix at A-14.

## PETITIONERS MISSTATE THE QUESTION PRESENTED

Petitioners present two questions in their Petition to frame their argument that legal issues must be tried to a jury even though joined in a matter with a request for injunctive relief or "incidental" to equitable issues and rely in this argument on *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 79 S.Ct. 948 (1959) and *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 82 S.Ct. 894 (1962). But Petitioners' questions and reliance on those cases leapfrog the more fundamental question in this particular case – i.e., whether the district court abused its discretion in determining that the issue presented by Petitioners' post-August 2, 1995 claims was a request for compensatory damages in civil contempt for violation of the injunction (and thus ***equitable*** in nature) – to the ***conclusion*** that there were issues of a legal nature to which the right to a jury trial attached. Petitioners' conclusion is not compelled in this case and, accordingly, there is no tenable ground for granting the writ.

This Court, in *Ross v. Bernhard*, 396 U.S. 531, 90 S.Ct. 733 (1970), has stated that "[t]he Seventh Amendment question depends on the ***nature of the issue to be tried*** rather than the character of the overall action." 90 S.Ct. at 738 (emphasis added). Even in *Dairy Queen*, cited by Petitioners, the Court instructed that "the constitutional right to trial by jury cannot be made to depend upon the choice of words in the pleadings." 369 U.S. at 477-78. As echoed by the Fifth Circuit,

> The seventh amendment to the Constitution provides: "In suits at common law, where the value of the controversy shall exceed twenty

> dollars, the right of trial by jury shall be preserved." This creates a historical test for trial by jury, but to apply this standard, the court must do more than simply determine whether the plaintiff has stated a claim for relief in his complaint that would have been triable to a jury when the amendment was adopted in 1791. ***Instead, the court must consider all of the issues raised in the case in order to determine the method of trial.***

*In re Corrugated Container Antitrust Litigation*, 752 F.2d 137, 143 (5th Cir.), *cert. denied sub nom Green Bay Packaging, Inc. v. Adams Extract Co.*, 473 U.S. 911, 105 S.Ct. 3536 (1985) (emphasis added). The right to a jury trial thus is not automatic.

The way to analyze "all of the issues raised in the case in order to determine the method of trial" has been outlined by this Court:

> To determine whether a particular action will resolve legal rights [and therefore give rise to a jury trial right], we examine both the nature of the issues involved and the remedy sought. "First, we compare the statutory action to 18th-century actions brought in the courts of England prior to the merger of the courts of law and equity. Second, we examine the remedy sought and determine whether it is legal or equitable in nature." The second inquiry is the more important in our analysis.

*Chauffeurs, Teamsters and Helpers, Local No. 391 v. Terry*, 494 U.S. 558, 565, 110 S.Ct. 1339, 1345 (1990) (citations omitted); *see also Borst v. Chevron Corp.*, 36 F.3d 1308, 1323-24 (5th Cir. 1994), *cert. denied*, 514 U.S. 1066, 115

S.Ct. 1699 (1995). The district court below indeed conducted an examination of "the remedy sought [to] determine whether it [was] legal or equitable in nature" and concluded ***"that once that injunction was in place, any additional claims for damages after that date are going to be equity claims before the Court . . . plus I really think it's all incorporated under the injunction and whether or not the injunction was followed by the parties."***

That Petitioners sought monetary damages on their post-August 2, 1995 claims does not automatically characterize those claims as legal in nature. As the *Borst* court stated, citing *Terry*,

> Plaintiffs' requests for monetary recovery on other claims, traditionally the form of relief offered in courts of law, do not mandate a conclusion that their action is legal in nature. *Calamia [v. Spivey]*, 632 F.2d [1235,] 1236-37 [(5th Cir. 1980)]("The mere fact that the appellant would receive a monetary award if he prevailed does not compel the conclusion that he is entitled to a jury trial"). The Supreme Court has recognized two exceptions to the general rule that a claim seeking monetary recovery is legal in nature. In *Terry*, the Court made clear that a request for monetary recovery sounds in equity, and thus does not guarantee a jury trial, when it is restitutionary in nature ***or is intertwined with claims for injunctive relief.*** *Terry*, 494 U.S. at 570-71, 110 S.Ct. at 1348.

36 F.2d at 1324 (emphasis added). Here, in fact, Petitioners sought injunctive relief as well as compensatory civil contempt damages, i.e., monetary damages, in a

proceeding that was equitable in nature. Nevertheless, although "money damages may be awarded under the Court's equitable power . . . , the availability of monetary damages as a remedy does not necessarily translate into a right to a jury trial." *Gauthreaux v. Baylor University Medical Center*, 876 F. Supp. 847, 849 (N.D. Tex. 1994).

Thus, the district court could and properly did conclude in its discretion that "the issue to be tried" in this case was whether Respondents violated the court's August 2, 1995 injunction. While "the character of the overall action" may have involved claims seeking monetary damages, the district court correctly examined "the remedy sought [to] determine whether it [was] legal or equitable in nature." The determination having been made that Petitioners sought compensatory civil contempt damages for violation of the injunction, i.e., "equity claims before the Court," the district court and the Fifth Circuit properly held that "[t]here is no right to a trial by jury for the violation of an order of court when the proceeding is for civil contempt unless a statute so provides." Thus, in the circumstances presented in this case, Petitioners' argument that they have been denied their Seventh Amendment right to a jury trial is not properly presented to this Court. More importantly, because Petitioners misstate the question presented, they cannot tenably demonstrate that the Court of Appeals "has decided an important federal question in a way that conflicts with relevant decisions of this Court." SUP. CT. R. 10(c). The proper question presented in this case does not warrant review by this Court.

## REASONS FOR DENYING THE WRIT

1. As above, a fair reading of Supreme Court Rule 10 as applied to the instant case demonstrates no ground for granting certiorari. Petitioners do not assert and cannot show that the Fifth Circuit "has entered a decision in conflict with the decision of another United States court of appeals on the same important matter." SUP. CT. R. 10(a). Instead, Petitioners have merely postulated that the Fifth Circuit erred through "the misapplication of a properly stated rule of law," SUP. CT. R. 10 – i.e., the well-settled rule that there is no right to a trial by jury when the proceeding is for civil contempt unless a statute so provides – instead of granting them a jury trial on their post-August 2, 1995 claims. Under these circumstances, there is no cause for this Court's review.

2. In addition, the instant case is complicatingly fact-bound in a number of respects. First, this case involved a "garden variety" condominium management dispute involving a single Galveston, Texas beachfront condominium development's rental program that was strategically infused with federal trademark issues by Mr. J. Ray Riley (a party and attorney for Petitioners), who practices intellectual property law. This created an unwieldy juxtaposition of legal theory and fact. Next, because the parties originally filed cross-applications for preliminary injunctive relief, the district court stepped into the litigation posthaste with a specific, yet broad-

reaching injunctive order within four weeks of the institution of suit.[7] Pursuant to that order, the parties operated up to the time of trial under the court's supervision. Finally, Petitioners added an injunction violation claim to their Complaint to address alleged actions of Respondents undertaken in this process, but improperly sought to have that claim tried to the jury by recasting the equitable claim in legal clothing. That this strategy impacted Petitioners' trial presentation in unanticipated ways should be of no moment to this Court.[8]

3. The Fifth Circuit appropriately applied correct law and properly held that Petitioners were not entitled to a trial by jury on their civil contempt claim. Although the issue merited only a footnote from the Court of Appeals, the ruling is amply supported in the law. The customary practice to address violations of an injunction is in contempt proceedings rather than a damages action:

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[7] Appendix at A-15-A-20.

[8] As the magistrate judge similarly observed, that Petitioners' litigation strategy . . .

> . . . may have backfired to some extent is of no moment. The Judge said, "From now on it's here. I want to establish the status quo." Any violations or problems that occurred after that, it seems to need to be dealt with by the Court, because now we're enforcing the injunction and whether or not the people behaved themselves after it was imposed. But you [Petitioners] asked for an injunction. You, in effect, got one. You got more than you asked for, because of what Judge Kent did.

Appendix at A-30.

> Although the right to bring an action for the damages actually sustained because of the violation of the injunction or to recover the penalty prescribed in the injunction as an alternate remedy for the same injury is recognized, ***the customary procedure by which an injunction is enforced or its violation punished is by proceedings in contempt.***

43A C.J.S. *Injunctions* § 302(a) (1978) (emphasis added), formerly 43 C.J.S. *Injunctions* § 271 (1945). In addition, this Court's decision in *Shillitani v. United States*, 384 U.S. 364, 365, 86 S.Ct. 1531, 1533 (1966) supports the proposition that there is no right to a jury trial in proceedings in the nature of civil contempt. Indeed, it is well-recognized, and was admitted by Petitioners below,[9] that "under federal law the general rule is that there is no right to a trial by jury when the proceeding is for civil contempt unless a statute so provides." 11A C. Wright, A. Miller & M. Kane, Federal Practice & Procedure § 2960 at 379 (1995). In fact, Petitioners could provide no supporting statutory authority in the instant situation. Accordingly, there was no basis in law or custom to allow Petitioners to present their civil contempt proceeding to the jury during the trial of this case. Such a proceeding is regularly and appropriately a matter for the court. The district court's ruling was not an abuse of discretion and the Court of Appeals did not err in affirming the district court. Thus, it is not reasonably argued by Petitioners that the Fifth Circuit "has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a

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[9] R. 70.

departure by a lower court, as to call for an exercise of this Court's supervisory power." SUP. CT. R. 10(a).

## CONCLUSION

For the reasons given above, the Petition should be denied.

Respectfully submitted,

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